IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.793 OF 2006

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Ramchandra Daulu Patil
since deceased through L.R.
Shri Rangrao Ramchandra Patil
and ors. ...Petitioners

v/s.

Tukaram Dattaji Patil
since deceased through L.Rs.
Shri Jaywant @ Balwant Tukaram
Patil and another. ...Respondents

...

Mr.Umesh Mankapure for the Petitioner.
Mr.A.M.Kulkarni for Respondents No.1A to 1F.

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CORAM: D.K.DESHMUKH, J.

DATED: 4TH JULY, 2007

P.C.:

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. By the impugned order the Appellate Court has declined to set aside the abatement of the appeal and has declined to condone the delay in making an application for bringing the legal representatives of the deceased-appellant on record. The delay is of six years and four months. The reason given was that the appellant's L.Rs. did not know that on the death of the appellant, the L.Rs. to be brought on record. The Petitioner is also willing to pay substantial costs to the Respondent.

3. In my opinion, considering that the substantial proprietary rights are involved in the appeal and as the Petitioner is willing to pay substantial costs, it will be in the interest of justice to direct the Appellate court to hear the appeal on merits. In my opinion, following order would meet the ends of justice.

O R D E R

The order impugned in the petition dated 5-7-2005 passed by the District Judge, Sangli is set aside.

The application made by the Petitioner for setting aside the abatement of the appeal, Regular Civil Appeal No.533 of 1990 is granted.

The application filed by the Petitioner for bringing the legal representatives of the deceased-appellant on record is also granted.

The Petitioner shall carry out amendment in the memo of appeal within a period of eight weeks from today.

Before carrying out the amendment, the Petitioner shall pay to the Respondents as and by way of costs of this petition and the application for abatement Rs.12,000/-. Payment of costs is condition precedent.

The Appellate court shall not permit the Petitioner to carry out amendments in the Memo of Appeal, if the proof of the fact that the amount of costs has been paid to the Respondents is not produced.

Rule made absolute, with the aforesaid order of costs.

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